

file a "letter of intent to file" are ordered to file a resale tariff as described below on or before July 24, 1996.

Ameritech, GTE, and those rural telephone companies that choose not to file a letter of intent to file or are otherwise exempted, should submit their proposed wholesale tariffs to the Commission's Engineering Division on or before July 24, 1996. Any interested party should contact the Commission to obtain copies of these filings or notify the prospective filer in advance for a copy. Such resale tariffs must include all telecommunications services offered to end users at retail, with the following exclusions: individual components of a packaged service offering, joint tenant service, grandfathered services¹², promotional offerings, and carrier access service. For administrative ease: (1) the wholesale tariff of Ameritech shall include all telecommunications services offered to end users at retail, including BLS, BLS-Related and Other Services, and (2) if an EAS surcharge currently applies in addition to a local exchange rate for EAS established under 170 IAC 7-4, et seq., it should be clearly indicated in the ILEC tariff. The proposed wholesale tariffs should mirror and replicate in total Ameritech's, GTE's, and the affected rural telephone companies' retail rate structures, including all discounts in their respective retail offerings to end users, less the various "costs to be avoided" under Sec. 252(d)(3). Along with the tariff filings, Ameritech, GTE and the affected rural telephone companies shall also include detailed cost support information that will be treated as public information. Tariff restrictions and costing methodology shall conform to Finding 5(B)(i) and Finding 5(D)(i). Parties may file comments about the proposed wholesale tariffs on or before August 7, 1996. A Technical Conference on any filing herein, if requested by an interested entity or determined necessary by the Commission, will be noticed and held as soon thereafter as is practical.

(ii). ALEC and ILEC Resale Tariffs. All ALEC resellers seeking certification or ILECs who seek additional certification from this Commission to operate as resellers should file their respective proposed informational retail tariffs with their certification petitions. Such proposed informational tariff should incorporate the restrictions specified herein. Future changes in the informational tariffs will be accomplished upon 10 days notice to the Commission's Engineering Division.

¹² GTE's Extended Area Service Distance Tariff is grandfathered at this time. However, the EAS Adder is in addition to the wholesale rate(s) determined for access lines and should be added as part of the determination of the bundled wholesale local exchange rate. GTE should clearly indicate on its wholesale tariff that the EAS Adder is applicable.

(iii). Term and Volume Discounts. In the Report there was indication that certain entities may want the flexibility to offer or obtain term or volume discounts for resellers, below the wholesale rates pursuant to the Act. Any such term or volume discounts may be contained in either the ILEC's proposed wholesale tariff or in agreements negotiated pursuant to the Act and thereafter approved by this Commission. We find that if an ILEC chooses to establish generic term and volume discounts, the underlying ILEC should include the terms and conditions for these discounts in its July 24, 1996, wholesale tariff filing. These proposed term and volume discounts, whether contained in tariffs or agreements, shall be reviewed by the Commission to determine if they meet the requirements of the Act and are in the public interest.

(F). Certification. The Executive Committee members appeared to be in general agreement that certification is needed before an entity can provide service in Indiana. There was some disagreement as to how such certification should be given to the parties and in fact we currently have pending several petitions requesting that the Commission summarily grant certain entities certification or indicate no such certification is required. While we do not want to address the merits of those particular petitions, the Commission does find in this generic proceeding that certification is needed before a reseller can provide resold services. We also find and determine that the public interest dictates a need for an expedited process to provide certification on a uniform basis. However, this Commission is a creature of statute and bound by laws of the State of Indiana unless and until they are amended, repealed, found unconstitutional, or otherwise preempted by federal law. Indiana Code Section 8-1-2-88 requires that in telephone certification matters, the Commission is required to follow certain procedures. However, the Legislature also recognized that the telephone industry is somewhat unique and requires certain regulatory flexibility. I.C. 8-1-2.6 provides the Commission with vast discretionary authority to establish certain procedures which would enhance and encourage competition in the telephone industry.

We have been invited by several parties to abandon the requirements of 8-1-2-88 based upon a conclusion that the hearing process and other regulatory proceedings under Section 88 are preempted and/or prohibited by the Act as being a barrier to competition. We decline the invitation. The Act specifically goes to great lengths to preserve State laws such as 8-1-2-88 wherein public interest issues are to be considered. However, having recognized this, the Commission does believe that this certification question falls squarely within the Commission's

discretionary authority under 8-1-2.6 and may be addressed through a process different from that prescribed by IC 8-1-2-88. Therefore, we find that an expedited review process is called for in these matters. Nevertheless, the Commission believes there continues to be a compelling interest in reviewing applications for a Certificate of Territorial Authority ("CTA") to ensure that the public interest is served. The residents in the State of Indiana, like those in the entire country, have come to rely on a high quality of telephone service. To take any steps which may erode such quality of service would be detrimental not only to the citizens of the State but the underlying infrastructure which supports the economy in the State of Indiana. Dependable, quality phone service is vital to the well being of the State and its residents.

In light of the above determination that an expedited review process is appropriate, we set forth the following procedure to be followed by each and every entity seeking to provide local telephone exchange service in the State of Indiana if it is not currently authorized to do.

The Executive Committee Report contains various questions and responses regarding the applicability of the "public utility" classification, as contained in Indiana law, in both the short run and the long run.¹³ The Indiana General Assembly has established that any entity that "owns, operates, manages, or controls any plant or equipment within the state for the conveyance of telegraph or telephone messages," is a public utility (IC 8-1-2-1(a)). This classification is independent of market share or of when an entity meeting the definition entered a particular market. The Executive Committee Report provides no compelling reason or need to modify this definition. Sprint/United's contention that, "as competition develops, there will be a general movement away from 'public utility' status balanced by a movement toward the status and obligations associated with commercial enterprises, for incumbent LECs and new entrants as well"¹⁴ raises some issues which may warrant further discussion. However, Ameritech correctly points out that, "as a practical matter, the definition of 'public utility' found in the Indiana Code will remain the same until such time as the Indiana legislature deems it appropriate to change that

¹³ Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 9-12.

¹⁴ Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 10.

definition."¹⁵ Because the current definition has not been changed, we now find that any ILEC or ALEC that "owns, operates, manages, or controls any plant or equipment within the State of Indiana for the conveyance of telegraph or telephone messages" will be classified and considered a public utility.

Every entity needs to obtain a CTA before having the ability to provide service in Indiana. To obtain a CTA, the entity must file a verified request together with evidence to support the entity's financial, technical, and managerial abilities to provide such service. The entity should also present evidence indicating the type, means and location of service the entity proposes to provide, and why such service would be in the public interest and in furtherance of the goals of full and fair competition. In reviewing any financial information provided by a prospective entity, the Commission will give due regard to considerations of an entity's ability to maintain the Commission's expectations regarding high quality telephone service. After receiving such a verified petition and supporting evidence, the Commission will thereafter publish notice that a request for a Certificate of Territorial Authority has been made. If any other entity chooses to oppose such a request, that entity should file notice with the Commission and be prepared to offer evidence to support their particular opposition as to why any of the four criteria set forth above have not been met through the verified petition process of the applying telephone utility. Such an opposing party should file its opposition in written form within 30 days after a request for a CTA has been made with the Commission.

Having settled the above, the Commission also feels compelled to point out that even though this initial order addresses the process of bundled resale, any entity interested in any other form of competition may avail itself of an independent specific filing to be considered by this Commission much like has already been done by MCI in Cause No. 39948/40130; AT&T, Cause No. 40415; TCG Indianapolis, Cause No. 40478; and others. The Commission will not and can not under the Act prohibit an entity from filing such petition for the Commission's consideration. However, it is the Commission's intent to pursue, generically, the issues of competition in this Cause as systemically and expeditiously as possible. Nevertheless, the parties should be aware that the Commission has several obligations under the Federal Telecommunications Act of 1996. The Commission will process any requests or filings on a case-by-case basis.

¹⁵ Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 9.

All ILECs and ALECs (including all resellers and any ILEC or ALEC affiliates and/or subsidiaries which have been classified as "public utilities" by this Commission), should be subject to the annual public utility fee, as described in IC 8-1-6-1 et seq., and in any applicable Commission or IURC Staff guidelines, letters, etc.; and shall observe any related procedures, requirements, terms, or conditions described therein. Therefore we find that all ILECs and ALECs who are hereinafter certificated under this process should pay the public utility fee under IC 8-1-6-1 et seq.

At this time, we are not prepared to rule on whether those ALEC resellers that are not currently required to file an annual, updated copy of the FCC Form M or other financial report with this Commission should be required to do so. The FCC Form M asks for respondents to submit certain accounting, financial, and other data based upon the so-called "Uniform System of Accounts" ["U.S.O.A."]. This, in turn, presupposes that the entity submitting the Form M Report, in fact, keeps its regulatory books and records in U.S.O.A. format. At this time, the Commission is not prepared to make any determinations regarding the proper accounting procedures and format for new entrants (e.g., U.S.O.A.). Therefore, at this time, we will not require ALEC resellers who are not already doing so to file an FCC Form M or other annual report with us. We would note that we retain considerable discretion under IC -1-2-10 et seq. to prescribe specific accounting systems and forms of books and accounts for public utilities in the state of Indiana; and under IC 8-1-2-50 et seq. to prescribe specific books, accounts, papers, records, and other documentation to be provided to this Commission, subject to applicable statutes and rules regarding the confidential treatment of certain information. We will revisit these issues at a later date, as we deem appropriate.

(G). Application of Commission Rules and Regulations.

All ILECs, and all ILEC and ALEC resellers, as well as any affiliates or subsidiaries thereof over which the Commission has jurisdiction, shall be subject to all applicable Commission rules and Orders, unless explicitly exempted by this Commission.

(H). Universal Service. The Commission will make no determination at this time regarding the universal service contributions and other issues not otherwise addressed herein related to universal service until such time as the Federal Communications Commission issues its rules or takes further action.

(I). Billing. The recommendations and testimony of the parties on billing matters with regard to bundled resale fell into two general categories: 1) the billing information needed by the ALEC in order to bill its customers, and 2) the billing of the ALEC

for wholesale services by the ILEC. We will discuss both billing matters and establish procedures for handling each below.

(i). ALEC Customer Billing. Several potential new entrants raised concerns regarding the issue of billing information. They claimed that in order for the ALEC reseller to be able to correctly bill its end-use customers, the underlying ILEC must provide the reseller sufficient detailed billing information that would allow an ALEC to be able to prepare its own customer bill. We agree and find that the ILEC should provide detailed record information for each wholesale exchange service purchased by the ALEC. The information provided by the ILEC must be complete and include enough detail to allow the ALEC to bill its customer for all local and interexchange calls that would normally be processed by the ILEC. This finding applies not only to the ILECs but also to the ALECs and what information, in turn must be shown to the end-use customers.

Some parties in this proceeding have asked us to require the ILECs to modify their billing systems to permit the ALEC reseller to directly bill the interexchange carrier.¹⁶ We decline to do so at this time. It is our intent at this initial phase to begin implementing competitive local exchange actions, of which bundled resale is a logical first step. While we are not currently prepared to order modification of ILEC billing systems, we invite further exploration of this issue in future hearings in this Cause.

We also find that the ALEC is responsible for billing its customers and providing accurate and timely bills, as specified in the existing Commission Rules.¹⁷ As the rules are currently administered, a local exchange telephone utility must separately identify the charges for E911 and InTRAC on each customer's bill. Each ALEC should do the same. If desired, the ALEC may request billing and collection services from the underlying ILEC. We find that such billing and collection arrangements can and should be accomplished through negotiated contracts between the ILEC and ALEC.

To reduce the incidences of fraud and uncollectibles, we encourage serving ALECs and ILECs to propose tariff language about procedures that would allow the monitoring and exchanging of such information between ALEC and ILEC. We are aware of the potential abuses of customers with unpaid balances attempting to switch from

¹⁶ Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 211.

¹⁷ 170 IAC 7-1.1, et seq., Standards of Service.

one local exchange carrier to another and avoid payment. We find that the exchange of appropriate information between affected telephone utilities which would discourage this type of activity is in the public interest and strongly encourage both ALECs and ILECs to cooperate to implement this finding.

(ii). ILEC Billing for Wholesale Services. An ALEC, as a wholesale customer of the ILEC, is responsible for payment of any outstanding wholesale charges. We believe the actual details of how a wholesale bill is rendered and how payment is received are best determined between the ILEC and ALEC, noting that the ILECs have experience in this area, such as billing the interexchange carriers for access services, and that the terms and conditions must be reasonable and nondiscriminatory. Our guidance in the area of billing for wholesale local exchange services between an ILEC and ALEC will focus on that instance when the ALEC fails to pay its wholesale bill. If an ALEC defaults on its outstanding wholesale bill, we find that the ILEC should be permitted to terminate service to the ALEC and provide such service directly to the ALEC's customers. The ILEC should include a clear and concise explanation of its ALEC disconnection policy and procedure in its wholesale tariff. In order to facilitate the Commission's possible communications with the affected customers and prior to disconnecting the ALEC, the ILEC should notify the Commission's Consumer Affairs and Engineering Divisions by telephone call or facsimile transmission of the pending termination of service to the ALEC.

(K). Number Portability. On June 7, 1996, the presiding officers issued a docket entry in this Cause establishing, among other things, a second hearing in this matter and calling for comments from the respective parties on matters related to long term number portability. Those comments were due and received on June 14, 1996. The June 7, 1996 docket entry and the respective comments received June 14, 1996 appear more fully in the following words and figures, to wit:

[H.I]

The Commission having considered the comments and recommendations of June 14, 1996 now finds that a task force should be established, to be made up of member/representatives from each of the interested parties in this Cause and facilitated by two Commission staff members. The Commission further finds that this task force should review and consider the "Stipulation and Settlement Agreement" attached to AT&T's June 14, 1996 filing. This "Stipulation and Settlement Agreement" is purportedly the document filed with and approved by the Illinois Commerce Commission in Docket No. 96-0089 relating to Illinois' disposition

of the number portability issue. The task force is specifically directed, but not limited to a review and consideration of technological issues related to long term number portability and the associated cost of each technology. Cost recovery and allocation issues will not be addressed in this task force process.

This number portability task force shall immediately be formed and organized by two Commission staff members designated by the presiding officers. The first organizational meeting, which will be monitored and facilitated by these two staff members shall be set for July 11, 1996 in the Commission Offices, Room E306, Indiana Government Center South, beginning at 9:30 a.m., local time. All parties desiring to participate and have input for Commission consideration should send a technical representative who is knowledgeable in this area and authorized by the particular party to discuss, present, decide and make recommendations to the Commission for ultimate action on certain number portability issues. The parties are advised that this may be their only opportunity to present and/or make their respective position(s) and recommendation(s) known and therefore should plan and participate accordingly. The task force shall have the limited authority to meet how and when it chooses but a final report and recommendation should be presented to the Commission on any and all issues generally described above on or before November 8, 1996. Disputes, confusion, or any other matter requiring Commission action or intervention, to allow the task force to accomplish this stated objective, should be formally presented to the Commission as soon as the matter arises.

(L). Quality of Service. As discussed above, quality of telephone service is of great importance to this Commission. Service quality encompasses such technical matters as installation intervals, repair intervals, operator answer time, call completion rates, and transmission quality, as well as, consumer oriented matters like marketing contacts, billing procedures, and complaint procedures. Our review of the positions of the parties set forth in the Report indicates that there was general agreement about the need for maintaining a minimum set of technical and consumer oriented service quality standards.¹⁸ It appears that the Commission's existing service quality standards, found at 170 IAC 7-1.1, et seq., are considered to be an appropriate benchmark for ILECs and ALECs, although there was discussion that the current rules may need to be updated commensurate with a competitive environment. Further, the parties felt that all local carriers

¹⁸ Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 77.

have a responsibility to notify their customers of their rights and responsibilities as consumers of telephone services, through the local directories, bill inserts and pamphlets. We agree with this position and find that all local carriers have an affirmative responsibility to notify their customers of their rights and responsibilities as consumers of telephone services, through the local directories, bill inserts and pamphlets.

Based upon our consideration of the parties' recommendations on this issue, we find that ILECs should continue to comply with all the service standards iterated in 170 IAC 7-1.1, et seq. ALECs should also comply with 170 IAC 7-1.1, et seq., including the technical and consumer oriented rules. To comply with the technical service quality standards, the ALEC should make arrangements with the ILEC that are consistent with meeting the technical service quality standards for its customers. In addition, ILECs and ALECs must comply with any applicable Indiana Statutes concerning quality of service, e.g., I.C. 8-1-2-54, I.C. 8-1-2-58, etc.

(M). Emergency Services/Society Services. Although there was general agreement among the parties that access to emergency services and society services (e.g., 911, E911, and InTRAC) should be maintained in a competitive environment, we will take this opportunity to reiterate and reinforce this conclusion. We believe it is crucial that the public safety be preserved, regardless of service provider. Provision and maintenance of these services will require cooperation between the service providers; nothing less than complete cooperation will be acceptable to this Commission.

To accomplish this charge, we find that the underlying ILECs must provide the ALECs access to 911, E911, and InTRAC services, to the extent and in the manner these services are available to the ILECs' own customers. In addition, ILECs and ALECs are responsible for the timely exchange of any and all information needed to update appropriate databases. The information should be exchanged in a format that is acceptable to both providers and facilitates the accuracy and timeliness of the databases. Any disputes between providers regarding formats or timing should be immediately referred to the Commission for resolution.

(N). Directories/Directory Listings. The Commission has established a rule regarding white pages directories that is found at 170 IAC 7-1.1-9 and states in part:

(A) Telephone directories shall be regularly published and shall normally list the name, address and telephone

number of all customers located in the exchange(s) contained in the directory, except the public telephone numbers and telephone numbers unlisted at the customers request. All telephone...

(B) Upon issuance, each customer served by a directory shall be furnished one (1) copy of that directory for each main station or trunk and, upon request, additional directories not to exceed the total...

(170 IAC 7-1.1-9(A) and (B))

This Rule insures that customers have access to all telephone numbers that may be called by that customer on a local toll-free calling basis.¹⁹

We note that the Federal Act also gives guidance about the provision of directory listings at Subsection 251(b)(3), with the requirement that all local exchange carriers must provide dialing parity, which includes the duty to permit all competing providers of telephone exchange service and telephone toll service to have "nondiscriminatory access to...directory listing" and at Subsection 222(e), which states that subscriber list information should be furnished "under nondiscriminatory and reasonable rates, terms and conditions."

Review of the testimony about directories and directory listings indicates that the parties had several dissimilar opinions about the provision of directories and directory listings by and between the incumbents and new entrants.²⁰ Although there appears to be a generally held belief that the provision of directories serves a public interest obligation, the parties dispute who should have to meet the obligation and how it should be met. In addition, there is a question about a directory provider's obligation to publish information about its competitor in its directory. The Commission addresses these three issues below.

First, we find that, for purposes of resale as defined in this Order, the ILEC should include the ALEC customer listings in its directories at no charge for standard listings, comparable to those

¹⁹ The Commission recently clarified that "the Rule should be construed to require the exchange of all listing information for all areas that can be called on a local call toll free calling basis, and that the information should be included in the directories." See Cause No. 40097, In re the Matter of the Investigation on the Commission's Own Motion Into Any and All Matters Relating To Extended Area Service, As Defined By 170 IAC 7-4 Et Seq, approved June 21, 1996, at 15.

²⁰ Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 27 - 30.

provided free of charge for its own retail customers.²¹ Any special requests from the ALEC for listings or directories should be negotiated between the ILEC and ALEC, giving consideration to the relevant language of the Federal Act. The obligation of the ILEC to include the ALEC customer listings is dependent on the ALEC providing the appropriate customer information in a compatible format and timely manner to the ILEC. We find that ALECs should be responsible for providing this information to the ILEC, under reasonable terms and conditions to be determined by the ILEC. The finding herein does not preclude ALECs from publishing and providing their own directories, subject to the conditions of 170 IAC 7-1.1-9.

Second, consistent with our Order in Cause No. 40097 and the Federal Act, we find that requests for subscriber list information between ILECs/ALECs, ILECs/ALECs and ALECs/ALECs should be priced at the cost of production of the list, which is the long-run incremental cost of: providing a magnetic tape, selling the listings at a per-listing charge, furnishing camera ready reproduction pages, or supplying bound directories.

Finally, we find that, for purposes of resale as defined in this Order, all ILECs should be required to publish the listing information of certificated ALECs in their directories, subject to the following conditions: White and Yellow Pages listing information should include the ALEC listing in a manner comparable to that provided free of charge for business retail customers. ALECs desiring to list information in the "information pages" of the ILEC White Pages should be permitted to do so through negotiated compensation arrangements with the ILEC.

While we imply above that all negotiations would be between the ALEC and ILEC, we do recognize that negotiations may be completed between the ALEC and the actual publisher of the directory, which may not always be the ILEC. Nevertheless, the ILECs and ALECs must still comply with the directory/directory listings obligations as determined above by the Commission.

(O). Operational Interfaces. Several parties expressed concern about the quality of operational interfaces needed between the ILEC and its wholesale customers. Information may be exchanged between the ILEC and ALEC in a variety of ways which may include, but are not limited to, electronic interfaces, technical interfaces, or access to databases. These parties stated that (1)

²¹ Unlisted and/or unpublished telephone listings should continue being handled in the same fashion and manner as the underlying ILEC is currently handling them.

effective resale competition could not be achieved unless a reseller can provide the same service, including the same quality, as the wholesale ILEC does when it provides the underlying retail service to its own end user customers and (2) the importance of equal operational interfaces is essential to the development of resale competition. We believe such concerns about the need for equivalent operational interfaces to be valid.

We find that the ability to utilize electronic access, technical interfaces, or access to databases to place service orders, receive phone number assignments, receive information necessary to bill the ALEC's customers, and to inform the ILEC of cases of trouble should be made available to each ILEC wholesale customer, where technically and economically feasible. If necessary to fulfill this responsibility, the ILEC will provide appropriate interface specifications to the ALEC. Also, in order to ensure that the needs of new entrants are satisfied, we find that all ILECs are required to provide to resellers, as an integral part of their resale service offering, all operational interfaces at parity with those the ILECs provide to their own retail customers, whether directly or through an affiliate. Further, Ameritech and GTE North and all other telephone utilities not otherwise exempt under the Act will be required to file, with their implementing tariffs, a report demonstrating their compliance with this directive. To the extent the ILECs contend they are unable to fully and immediately implement operational parity, they should be required to submit a comprehensive plan, including specific timetables, for achieving compliance.

(P). Illegal Changes in Subscriber Carrier Selections (Slamming). The definition of slamming was augmented and expanded in the Act when Congress stated:

No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission [FCC] shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

1996 Act, Sec. 258(a).

In addition, at page 216 of Section III (Volume I) of the Final Report, the responses to questions about the possibility of local exchange slamming indicate "it would be reasonable for the Commission [IURC] to adopt similar anti-slamming provisions that the Federal Communications Commission has adopted for interLATA

toll presubscription..." We agree that anti-slamming provisions should be adopted to prohibit unauthorized service transfer, including the unauthorized termination, of local exchange service. We find that such anti-slamming provisions would be in the public interest, and herein approve and institute interim local exchange anti-slamming provisions.

For local exchange service provision, the following interim conditions concerning unauthorized service termination and transfer shall apply to both ILECs and ALECs:

An ILEC or ALEC will be held liable for both the unauthorized termination of service with an existing carrier and the subsequent unauthorized transfer to their own service. ILECs and ALECs are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A carrier who engages in such unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. All billings during the unauthorized service period shall be refunded to the applicant or customer. The ILEC or ALEC responsible for the unauthorized transfer will reimburse the original carrier for reestablishing service at the tariff rate of the original carrier.

The Commission plans to revisit the interim local exchange anti-slamming provisions above after the FCC has completed its proceedings pursuant to the Congressional directions of the Act. Depending on the rules promulgated by the FCC, we may modify these interim provisions to include specific verification procedures, monetary penalties or other processes adopted by the FCC or found to be more effective in handling slamming complaints.

(Q). Miscellaneous Issues.

(i). Relationship of "Opportunity Indiana" to the Federal Act. While we will not engage in a comprehensive review of the "Opportunity Indiana" plan for Ameritech (Cause No. 39705) in this Order, there is one potential conflict between the 39705 plan and the Telecommunications Act of 1996 which warrants discussion herein. In Cause No. 39705, the Commission set a price floor for Ameritech's "Other Services" of one percent above the Long Run Service Incremental Cost for a given service ("LRSIC + 1%"). Furthermore, we are administratively aware that Ameritech provides certain "Other Services" under so-called "Individual Customer Arrangements" ("ICA") which are contractual arrangements in which the Company provides a particular "Other Service" at some rate below the tariffed retail rate but above the price floor of LRSIC + 1%. The ICA rate for the end user (contract) customer has

historically been considered confidential, proprietary, and a trade secret by this Commission. GTE and several other ILECs offer various other similar types of services under so-called "Customer Specific Offerings," or "CSOs," in which some or all of the relevant contract rates are also treated as confidential, proprietary, and a trade secret.

As has been discussed several times in this Order, under the Telecommunications Act of 1996, ILECs are required to make each and every retail service (with certain congressionally-specified exceptions) available for resale at wholesale rates, to be determined by State Utility Commissions, such as the IURC, and set equal to retail rates minus certain "costs that will be avoided by the [ILEC]." Thus, the ILEC's retail rate for the requested service is the starting point in calculating the applicable wholesale rate. However, the use of ICAs, CSOs, and other types of special contractual arrangements may allow an ILEC to offer an end user (contract) customer a rate for a particular service which is different than the ILEC's approved wholesale rate for the service in question. These types of contractual relationships may be prohibited under the Act because the reseller is unable to match the ILEC's contractual rate without potentially violating the above established price floor requirement of a similar resale service. However, we need only review the resale language of the Act which indicates resale applies only to retail services **generally available to the public**. By definition, these types of services at issue may not be "generally available" to the public. However, we believe this issue needs further review and we therefore find that all ILECs that do not notify us on or before July 24, 1996, of their intent to seek a suspension or modification under Section 252 of the Act should file, along with their wholesale tariff information, legal briefs or comments on this issue. We will not at this time disturb any previously established and approved special contractual customer situations. However, we will review any new requests for this treatment very carefully to determine their appropriateness under the new Act. Any brief, supporting testimony or other evidence on this issue, whether filed as part of the July 24, 1996 wholesale tariff filing provided for herein, or as part of a new request for special treatment should be limited to a total of 35 pages, including attachments.

(ii). Complaints. In these early stages of local telephone exchange competition in the state of Indiana, there are bound to be many disputes and disagreements involving both ILECs and ALECs and, perhaps, end user customers or their representatives. While we certainly hope that the affected parties can resolve these disputes and disagreements on their own, we realize that may not always be possible. Where appropriate, an

entity may desire the Commission's assistance and expertise and may formally request that the Commission intervene and resolve some or all of the matters in dispute. While we obviously cannot anticipate any and all types of disputes which may arise, neither do we want to prevent any party from requesting our assistance or intervention.

Accordingly, for all ILECs (and any affected affiliates or subsidiaries thereof), and for all ILEC and ALEC resellers (and any affected affiliates or subsidiaries thereof), we herein specifically retain jurisdiction over the entirety of Title 8 of the Indiana Code and other applicable statutes, except to the extent we have explicitly declined our jurisdiction in other proceedings or forums. Similarly, all parties affected by this paragraph shall comply with all Commission rules and regulations promulgated under IC 8-1-1-3, IC 8-1-2.6-3, and other applicable statutes, unless explicitly exempted by this Commission. Finally, all parties affected by this paragraph shall be subject to any decisions rendered by this Commission or the Commission's Consumer Affairs Division, consistent with the statutory language contained at IC 8-1-2-34.5.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Ameritech, GTE and affected rural telephone companies who have not otherwise sought or received exemptions from this Commission under the Act shall file proposed wholesale tariffs with cost support as described in Finding Paragraph 5(B) above with the Commission on or before July 24, 1996. Any other entity may file comments or opposition to any wholesale tariff filings with the Commission about the proposed wholesale tariffs on or before August 7, 1996. A Technical Conference or hearing on any filing herein, if requested by an interested entity or determined necessary by the Commission, will be noticed and held as soon thereafter as is practical.

2. ALEC and ILEC resellers (as defined above in Finding Paragraph 5) must seek certification pursuant to the criteria set forth in Finding Paragraph 5(F) above in the areas in which they intend to resell services and are required to pay the public utility fee as defined in IC 8-1-6-1 et seq.

3. ALEC and ILEC resellers shall file informational retail tariffs with this Commission which shall meet and include the requirements set forth in Finding Paragraph 5(a)(iii) & (iv).

4. The findings and conclusions set forth in Finding Paragraph 5(A) through (Q) above not otherwise addressed are hereby approved and adopted on an interim basis.

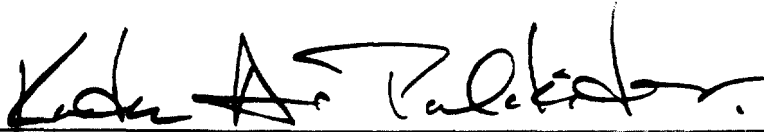
5. This order shall be effective on and after the date of its approval on an interim basis.

MORTELL, KLEIN AND ZIEGNER CONCUR, with HUFFMAN CONCURRING IN PART AND DISSENTING IN PART IN A SEPARATE OPINION:

APPROVED:

I hereby certify that the above is a true and correct copy of the Order as approved.

JUL 01 1996

A handwritten signature in black ink, appearing to read 'Kostas Poulakidas', is written over a horizontal line.

Kostas Poulakidas,
Secretary to the Commission

Dissenting Opinion of Mary Jo Huffman
Cause No. 39983
July 1, 1996

Today, I am unable to join my colleagues in approving the proposed order in Cause No. 39983. My responsibility as a Commissioner is to be an impartial finder of facts and to render informed decisions that I believe are in the public interest. As I considered this order in Cause No. 39983, I found myself in the dilemma of not being able to execute that role.

This cause was started two years ago under Indiana Code Section 8-1-2-58 to investigate local competition. Monumental efforts were put into this cause by all the parties including the IURC staff and the members of the Executive Committee headed by Paul Hartman. I sincerely commend all the participants for their efforts.

Despite the dedicated efforts of this group, the conclusion of their investigation came within days of the passage of the Telecommunications Act of 1996. The Executive Committee's Final Report was submitted January 16, 1996. The federal Act was approved February 8, 1996, and evidentiary hearing on the report began February 12. Post-hearing briefs were filed March 8, 1996.

It is my belief that the federal Act takes precedence over the efforts made by the Executive Committee. As a result, the focus of this order should be on the interpretation of the relevant resale provisions of the federal Act as stated in Section 251 (c) (4) and 252 (d)(3).

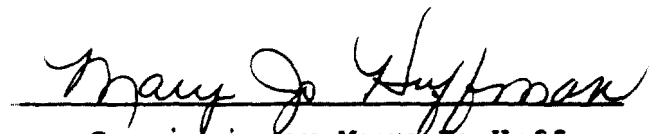
At the present time, the Commission may or may not have received sufficient evidence from the parties. Page 20 of the Commission's order states that most witnesses at the evidentiary hearing on the Executive Report "cautioned that they were still in the analysis process," regarding the federal Act. Additionally many of the parties indicated that their positions outlined in the Executive Report might change in response to the federal Act.

As a result, I feel the parties had insufficient opportunity to fully analyze the federal Act before filing their post-hearing briefs and submitting to us their positions on competition relative to the Act. Therefore, I believe that I also have insufficient evidence and argument pertinent to the application of the federal Act before me to make an informed decision on bundled resale under the federal Act.

I have long been open about my position that the Commission should quickly begin its efforts toward de-regulation in the telecommunications industry. While this order may be a step in that direction, it is my belief that we are proceeding without a clear understanding of how best to apply the Act upon an evidentiary record which was developed prior to its enactment.

I prefer not to comment on the merits of this order -- it may very well contain the optimum guidelines for our state.

But if it does, it will be a coincidental arrival and not one based on careful analysis of the Act itself. Because this order is based on the Commission's investigation, which preceded the Telecommunications Act, I must respectfully dissent.


Commissioner Mary Jo Huffman



NEWS RELEASE

MEDIA OFFICE

PHONE: (614) 466-7750

FAX: (614) 752-8802

DICK KIMMINS, Media Director LEE VEROSKI, Deputy Media Director

WORLD WIDE WEB SITE: <http://www.puc.state.oh.us>

The Public Utilities Commission of Ohio • Craig A. Glazer, *Chairman* • 180 East Broad Street, Columbus, Ohio 43215-3793

96-72

FOR IMMEDIATE RELEASE

June 12, 1996

PUCO ADOPTS GENERIC GUIDELINES FOR LOCAL TELEPHONE COMPETITION

COLUMBUS, OH -- The Public Utilities Commission of Ohio (PUCO) today adopted generic consumer protection guidelines to launch local telephone competition in Ohio. The landmark guidelines complete the regulatory framework in Ohio to allow competition among companies for the \$3 billion a year intrastate local exchange telephone business.

Thirteen companies so far have requested PUCO approval to offer local exchange services in competition with Ohio's 42 existing, or "incumbent" local exchange providers.

The generic guidelines outline a broad set of policies and procedures that must be followed by companies wishing to offer local exchange telephone service in Ohio. They are to be reviewed automatically by the PUCO within three years.

The generic guidelines are the result of nearly two years' work by the staff of the PUCO. A preliminary working draft was released publicly March 24, 1995 and was the subject of a series of public roundtable discussions last spring and summer. On September 27, 1995, the staff of the PUCO released a revised set of guidelines for public comment. More than 5,000 pages of comments subsequently were filed, include the transcripts of 10 public forums hosted by the PUCO in Cleveland Heights, Cleveland, Warren, Athens, Dayton, Cincinnati, Vanlue, Akron, Toledo and Columbus.

The guidelines include:

***** SLAMMING** - No local telephone company customer can be switched to another local carrier without the written approval of the customer.

***** UNIVERSAL SERVICE** - The creation of a state universal service fund to ensure that reasonably priced service is available to rural areas and to low-income customers.

-more-

Generic Guidelines 2-2-2

***** SERVICE STANDARDS** - A requirement that all companies offering local exchange service in Ohio meet and maintain Minimum Telephone Service Standards on, among other service related matters, the repair of outages, the installation of new service and the keeping of service appointments.

***** NUMBER PORTABILITY** - Any current telephone company customer can switch to another provider without having to change telephone numbers.

***** LOCAL CALLING AREA** - Language to allow new local exchange companies to self-define the local calling area they wish to serve, thereby allowing an unlimited number of calls within that area for a flat, monthly rate.

***** DIRECTORIES** - A requirement that all customers of a local exchange company receive a free listing, if they choose, of their number in a directory. In addition, each customer shall receive a directory at no cost containing the listed numbers of all customers within a specific geographic area.

***** 911** - A requirement that all new local exchange companies provide 911 service where it now is offered or where it may become available.

***** INTERNET ACCESS** - All local exchange providers in Ohio offer service capable of data transmission of at least 9600 Baud.

***** LOW INCOME SUBSIDIES** - All telecommunications companies shall provide support to the universal service fund based on a percentage of intrastate revenues.

(A copy of the generic guidelines is available on PUCO's Internet home page on the World Wide Web.)

Generic Guidelines 2-2-2

***** SERVICE STANDARDS** - A requirement that all companies offering local exchange service in Ohio meet and maintain Minimum Telephone Service Standards on, among other service related matters, the repair of outages, the installation of new service and the keeping of service appointments.

***** NUMBER PORTABILITY** - Any current telephone company customer can switch to another provider without having to change telephone numbers.

***** LOCAL CALLING AREA** - Language to allow new local exchange companies to self-define the local calling area they wish to serve, thereby allowing an unlimited number of calls within that area for a flat, monthly rate.

***** DIRECTORIES** - A requirement that all customers of a local exchange company receive a free listing, if they choose, of their number in a directory. In addition, each customer shall receive a directory at no cost containing the listed numbers of all customers within a specific geographic area.

***** 911** - A requirement that all new local exchange companies provide 911 service where it now is offered or where it may become available.

***** INTERNET ACCESS** - All local exchange providers in Ohio offer service capable of data transmission of at least 9600 Baud.

***** LOW INCOME SUBSIDIES** - All telecommunications companies shall provide support to the universal service fund based on a percentage of intrastate revenues.

(A copy of the generic guidelines is available on PUCO's Internet home page on the World Wide Web.)

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission)
Investigation Relative to the Establishment)
of Local Exchange Competition and Other) Case No. 95-845-TP-COI
Competitive Issues.)

FINDING AND ORDER

The Commission finds:

BACKGROUND:

On September 21, 1995, this Commission formally initiated this proceeding seeking to establish competition in the last segment of monopoly authority in the telecommunications arena--the local exchange market. Establishment of competition in the local exchange market is by far the most ambitious and difficult of all the markets to be opened to competition. The path on which we now embark is daunting, but nevertheless one we must travel especially in light of the enactment of the Telecommunications Act of 1996 (1996 Act). Before commencing on this journey, it is appropriate to briefly review intrastate regulatory initiatives that have led us to this point.

At the turn of the twentieth century, the telephone industry was characterized by many small providers stringing telephone lines throughout the more urbanized areas and connecting users to separate independent networks. Often, these providers competed directly with each other for customers within the same geographic operating areas. In 1911, the newly-reformed Public Service Commission (later renamed the Public Utilities Commission of Ohio) was empowered with broad legislative authority over telephone companies to establish regulations which would protect the public interest in such an environment. In an effort to encourage telephone companies to universally expand their facilities to pass all homes throughout the state, the Commission authorized those providers to establish operating areas. The Commission's authority over competition and its role in encouraging expansion of facilities and services was explicitly acknowledged by the Ohio Supreme Court in *Ashley Tri-County Mut. Tel. Co. v. New Ashley Tel. Co.*, 92 Ohio St. 336 (1915), and *Celina & Mercer County Tel. Co. v. Union-Center Mutl. Tel. Ass'n.*, 102 Ohio St. 487 (1921). This trend was not unique in Ohio and was being pursued throughout much of the country at the time. In fact Congress, in passing the 1934 Communications Act, stated that one of the primary goals of that legislation was to "make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . . ." 47 U.S.C. 153.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission)
Investigation Relative to the Establishment)
of Local Exchange Competition and Other) Case No. 95-845-TP-COI
Competitive Issues.)

FINDING AND ORDER

The Commission finds:

BACKGROUND:

On September 21, 1995, this Commission formally initiated this proceeding seeking to establish competition in the last segment of monopoly authority in the telecommunications arena--the local exchange market. Establishment of competition in the local exchange market is by far the most ambitious and difficult of all the markets to be opened to competition. The path on which we now embark is daunting, but nevertheless one we must travel especially in light of the enactment of the Telecommunications Act of 1996 (1996 Act). Before commencing on this journey, it is appropriate to briefly review intrastate regulatory initiatives that have led us to this point.

At the turn of the twentieth century, the telephone industry was characterized by many small providers stringing telephone lines throughout the more urbanized areas and connecting users to separate independent networks. Often, these providers competed directly with each other for customers within the same geographic operating areas. In 1911, the newly-reformed Public Service Commission (later renamed the Public Utilities Commission of Ohio) was empowered with broad legislative authority over telephone companies to establish regulations which would protect the public interest in such an environment. In an effort to encourage telephone companies to universally expand their facilities to pass all homes throughout the state, the Commission authorized those providers to establish operating areas. The Commission's authority over competition and its role in encouraging expansion of facilities and services was explicitly acknowledged by the Ohio Supreme Court in *Ashley Tri-County Mut. Tel. Co. v. New Ashley Tel. Co.*, 92 Ohio St. 336 (1915), and *Celina & Mercer County Tel. Co. v. Union-Center Mutl. Tel. Ass'n.*, 102 Ohio St. 487 (1921). This trend was not unique in Ohio and was being pursued throughout much of the country at the time. In fact Congress, in passing the 1934 Communications Act, stated that one of the primary goals of that legislation was to "make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . . ." 47 U.S.C. 153.

TABLE OF CONTENTS

| | <u>PAGE NO.</u> |
|----------------------------------------------------------------------|-----------------|
| BACKGROUND | 1 |
| DISCUSSION | 6 |
| A. LEGAL AUTHORITY | 6 |
| B. REGULATORY GUIDELINES VERSUS ADMINISTRATIVE RULES | 10 |
| C. REGULATORY SYMMETRY | 12 |
| LOCAL COMPETITION GUIDELINES | 14 |
| I. OVERVIEW | 14 |
| II. CERTIFICATION ISSUES | 14 |
| A. Jurisdiction | 14 |
| B. Exemptions for Certain LECs | 20 |
| C. Complaints | 25 |
| D. Minimum Requirements | 26 |
| E. Accounting Standards | 27 |
| F. Certification Process | 28 |
| G. ILECs as NECs | 29 |
| H. Expansion of Operating Authority | 30 |
| I. Serving Area: Self-Definition and Service Coverage | 30 |
| J. Local Calling Areas | 31 |
| K. Minimum Service Requirements | 32 |
| III. INTERCONNECTION | 33 |
| IV. COMPENSATION FOR THE TRANSPORT AND TERMINA- TION OF TRAFFIC | 35 |
| V. PRICING STANDARDS | 39 |
| VI. TARIFFING REQUIREMENTS | 43 |
| VII. FILING PROCEDURES AND REGISTRATION FORM | 48 |
| VIII. UNBUNDLING | 50 |
| IX. RESALE | 53 |
| X. DIALING PARITY/1+ INTRALATA PRESUBSCRIPTION | 55 |
| XI. NONDISCRIMINATION BETWEEN COMPETITORS | 56 |
| XII. RIGHT-OF-WAY | 58 |
| XIII. UNIVERSAL SERVICE | 59 |
| XIV. NUMBER PORTABILITY | 63 |
| XV. NUMBERING ASSIGNMENT AND ADMINISTRATION | 65 |
| XVI. DIRECTORY LISTINGS | 65 |
| XVII. INTERCONNECTION TECHNICAL STANDARDS | 66 |
| XVIII. CONSUMER SAFEGUARDS | 67 |
| XIX. REGULATORY OVERSIGHT | 69 |
| ATTACHMENT A TO APPENDIX A (LRSIC) | 70 |
| TRANSITION | 71 |
| CONCLUSION | 73 |

The near monopoly provision of local exchange telephone service, characterized by one provider per market, has served well the purpose for which it was intended. The downside of monopoly authority is that regulation and regulators must replace the competitive marketplace in order to ensure that monopoly providers use their authority in a manner which benefits the public interest. The technological advances of the second half of the twentieth century along with legislative changes embodied in Section 4905.02, Revised Code, recently passed Senate Bill 306 and the 1996 Act have made it possible to reconsider the regulatory compact and to determine to what extent, if any, this Commission can substitute competitive market forces in place of regulatory forces.

Due in part to technological developments and an emerging change in the federal regulatory approach, this Commission, in an April 9, 1985, Finding and Order in *In the Matter of the Commission Investigation Into the Regulatory Framework for Telecommunication Services in Ohio*, Case No. 84-944-TP-COI (944), determined that its traditional regulatory approach should be relaxed and streamlined to the degree competition replaced regulation while still safeguarding the public interest. The 944 order recognized that many segments of the telecommunications industry were, by then, no longer characterized by the monopolistic behavior of a few players, but rather by a burgeoning field of entities looking to compete in a competitive telecommunications marketplace. Under 944, the Commission retained full regulatory jurisdiction while affording providers of competitive telecommunication services significant ratemaking flexibility.

On August 2, 1986, the Commission, recognizing that additional ratemaking flexibility was warranted and opened *In the Matter of Phase II of the Commission's Investigation Into the Regulatory Framework for Competitive Telecommunication Services in Ohio*, Case No. 86-1144-TP-COI (1144). Under 1144, the Commission, among other things, established a streamlined proceeding in which a company could, through a self-complaint process, increase the rates for competitive services without having to file a general rate case under the traditional ratemaking methodology. The Commission went on to conclude, however, that it was without the necessary legislative authority to create as flexible a regulatory framework as might have been warranted at the time. On October 14, 1988, legislation was introduced in the Ohio General Assembly which would have among other things, established alternative regulatory requirements for competitive telephone companies and established a policy for the state which embraced diversity of suppliers, universal service, and the maintenance of reasonable rates.

On December 15, 1988, Amended Substitute House Bill No. 563 (H.B. 563) was signed into law which enacted several new statutes including Sections 4905.402 and 4927.01 through 4927.05, Revised Code. This legislation (which primarily took effect on March 17, 1989) authorizes the Commission, among other things, to exempt a telephone company, with respect to a competitive telecommunications service it provides, from compliance with existing statutory provisions regarding ratemaking or any other aspect of telephone company regulation, or to prescribe alternative regulatory requirements